

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LOVELL THOMAS,

Petitioner,

Civil No. 2:12-cv-11707
Honorable Sean F. Cox

MARY BERGHUIS,

Respondent.

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT [Dkt. 28]

On December 9, 2014, the Court denied Petitioner's petition for a writ of habeas corpus. The Court also denied a certificate of appealability. Petitioner appealed, but the Sixth Circuit likewise denied a certificate of appealability. *Thomas v. Berghuis*, No. 15-1164 (6th Cir. Sep. 10, 2015). Petitioner claims he did not receive timely notice of the Sixth Circuit's decision. Petitioner sought an extension of time to file a motion for *en banc* rehearing, but it was denied by the Sixth Circuit by order dated December 29, 2016.

Petitioner brings the present motion pursuant to Federal Rule of Civil Procedure 60(b)(1). Relief from judgment may be granted pursuant to Rule 60(b)(1) where the Court's judgment was the result of "mistake, inadvertence, surprise, or excusable neglect." FED. R. CIV. P. 60(b)(1). This Court properly notified Petitioner of entry of the judgment against him. If an error occurred in the Sixth Circuit

regarding service of its order upon Petitioner, such an error would not present grounds for reissuing the judgment entered against Petitioner in this Court. The case cited by Petitioner, *Hill v. Howes*, 320 U.S. 520 (1944), concerns the authority of a district court to reissue a judgment entered in district court that was not served upon the losing party.

Based upon the foregoing,

IT IS HEREBY ORDERED that Petitioner's Motion for Relief From Judgment [Dkt. 28] is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED** because reasonable jurists would not debate the disposition of Petitioner's motion.

IT IS FURTHER ORDERED that permission to appeal in forma pauperis is **DENIED** because any appeal of this order would be frivolous.

Dated: February 4, 2019

s/Sean F. Cox
Sean F. Cox
U. S. District Judge